Public Islamic Bank Bhd v Fadhil Husseiin Ishak Yassin bin Mansor (MS Citajaya Sdn Bhd, proposed intervener)

HIGH COURT (SHAH ALAM) — APPLICATION FOR EXECUTION NO BA-38–399–04 OF 2018
JAMHIRAH ALI JC
30 DECEMBER 2022

Land Law — Charge — Order for sale — Successful bidder at court ordered public auction paid deposit and had 120 days to pay balance purchase price into court under s 257(1)(g) of the National Land Code ('NLC') — Purchaser could not comply with deadline because of Government-ordered total lockdown of activities in all sectors to curb spread of Covid-19 virus — Purchaser applied to court for extension of deadline — Deputy registrar of court omitted from consideration 28 days within the 120-day period when there was a total lockdown and fixed new deadline for purchaser to settle balance purchase price — Whether although court had no power to extend mandatory time period specified under s 257(1)(g) of the NLC, deputy registrar had properly invoked inherent power of court to do justice to purchaser given the extraordinary and unprecedented circumstances of the case

The High Court had granted the plaintiff an order for sale by public auction of a property that was charged to it by the defendant. The property was sold to the proposed intervener herein ('MS Citajaya') when its bid was accepted at the auction. After paying the deposit into court, MS Citajaya had 120 days from the auction date to settle the balance purchase price pursuant to s 257(1)(g) of the National Land Code ('the NLC'). The 120 days expired on 3 August 2021 ('the deadline'). MS Citajaya applied to the plaintiff for a loan to finance the purchase and also paid the differential sum by 16 July 2021. However, because of Movement Control Orders ('MCOs') and lockdowns implemented by the Malaysian Government from 1 June 2021 to curb the spread of the Covid-19 virus which found its way into the country, MS Citajaya found it was unable to comply with the deadline as the MCOs and lockdowns had either totally shut down or reduced the working hours in many sectors including banks, law firms and government departments. MS Citajaya applied to intervene in the foreclosure proceedings and seek an extension of the deadline to pay the balance purchase price. The application was served on both the plaintiff and the defendant. At the hearing, the deputy registrar ordered MS Citajaya to pay the balance purchase price by 1 September 2021 after omitting from consideration 28 days within the 120-day period when there was a total lockdown. MS Citajaya settled the balance purchase price before the new deadline and had the property transferred into its name. The defendant appealed against the deputy registrar's decision.

Held, dismissing the appeal:

(1) MS Citajaya, being the successful bidder and a bona fide purchaser of the property and having paid the full purchase price, had the locus to participate as a party to defend its rights in this proceeding (see para 15).

(2) Paragraphs (g) and (h) of s 257(1) of the NLC which provided that the balance purchase price shall be settled no later than 120 days from the date of the sale and that there shall be no extension of that time period and that if payment was not made within that time period the deposit paid by the intending purchaser shall be forfeited, were all mandatory provisions. The court therefore had no power to extend the 120 days stipulated under s 257(1)(g) for the buyer to pay the balance purchase price (see paras 16–19).

(3) Given the unprecedented events and circumstances brought about by the Covid-19 virus outbreak that had forced the country into a lockdown, and to avoid an injustice occasioning to MS Citrajaya as a result, the deputy registrar correctly invoked the court's inherent jurisdiction to exclude from the computation of the 120 days under s 257(1)(g) of the NLC, 28 days from 1 August 2021 until 28 June 2021 when a total lockdown was in force (see paras 13 & 31).

(4) The court took cognisance of the fact that although MS Citajaya's application for extension of time was served on the defendant, he did not file his submissions by the date directed by the court. The evidence showed that MS Citrajaya was a bona fide purchaser and had taken all necessary steps to comply with the conditions under the order for sale and the auction but was unable to comply with the deadline for payment of the balance purchase price due to events beyond its control. In the premises, the deputy registrar had exercised his discretion correctly to come to a just and fair decision in all the circumstances of the case (see paras 27, 32 & 34).

(5) Since the appellant did not apply for a stay of execution of the deputy registrar's decision, the purchaser eventually became the registered owner of the property and acquired an indefeasible title to the same; hence, any challenge by the appellant against the purchaser's title under s 340(2) of the NLC would have to be by way of a fresh action (see para 33).

[Bahasa Malaysia summary

Mahkamah Tinggi telah memberikan plaintif perintah jualan secara lelongan awam hartanah yang digadai kepadanya oleh defendan. Hartanah tersebut telah dijual kepada pencelah yang dicadangkan di sini ('MS Citajaya') apabila bidaannya diterima semasa lelongan. Selepas membayar deposit ke mahkamah, MS Citajaya mempunyai 120 hari dari tarikh lelongan untuk menjelaskan baki harga belian menurut s 257(1)(g) Kanun Tanah Negara ('KTN'). Tempoh 120

hari tamat pada 3 Ogos 2021 ('tarikh akhir'). MS Citajaya memohon kepada plaintif untuk mendapatkan pinjaman bagi membiayai pembelian tersebut dan juga membayar jumlah baki pada 16 Julai 2021. Bagaimanapun, disebabkan Perintah Kawalan Pergerakan ('PKP') dan sekatan yang dilaksanakan oleh Kerajaan Malaysia mulai 1 Jun 2021 untuk membendung penularan virus Covid-19 yang menjangkiti negara, MS Citajaya mendapati ia tidak dapat mematuhi tarikh akhir kerana PKP dan sekatan telah sama ada ditutup sepenuhnya atau waktu bekerja di banyak sektor dikurangkan termasuk bank, firma guaman dan jabatan kerajaan. MS Citajaya memohon untuk mencelah dalam prosiding perampasan dan memohon lanjutan tarikh akhir untuk membayar baki harga belian. Permohonan telah disampaikan kepada kedua-dua plaintif dan defendan. Pada perbicaraan itu, timbalan pendaftar memerintahkan MS Citajaya membayar harga belian baki selewat-lewatnya pada 1 September 2021 selepas mengetepikan daripada pertimbangan 28 hari dalam tempoh 120 hari apabila berlaku penutupan penuh. MS Citajaya menyelesaikan baki harga belian sebelum tarikh akhir baharu dan meminta hartanah tersebut dipindahmilik ke namanya. Defendan merayu terhadap keputusan timbalan pendaftar.

Diputuskan, menolak rayuan:

(1) MS Citajaya, sebagai pembida yang berjaya dan pembeli bona fide hartanah dan telah membayar harga pembelian penuh, mempunyai lokus untuk mengambil bahagian sebagai pihak untuk mempertahankan haknya dalam prosiding ini (lihat perenggan 15).

(2) Perenggan (g) dan (h) s 257(1) KTN yang memperuntukkan bahawa baki harga belian hendaklah diselesaikan selewat-lewatnya 120 hari dari tarikh jualan dan tiada lanjutan harga pembelian tersebut dan jika pembayaran tidak dibuat dalam tempoh masa tersebut, deposit yang dibayar oleh pembeli yang berhasrat akan dilucuthakkan, semuanya adalah peruntukan mandatori. Oleh itu, mahkamah tidak mempunyai kuasa untuk melanjutkan 120 hari yang ditetapkan di bawah s 257(1)(g) untuk pembeli membayar baki harga belian (lihat perenggan 16–19).

(3) Memandangkan peristiwa dan keadaan yang tidak pernah berlaku sebelum ini yang ditimbulkan oleh wabak virus Covid-19 yang telah memaksa negara ditutup, dan untuk mengelakkan ketidakadilan yang berlaku kepada MS Citrajaya sebagai akibatnya, timbalan pendaftar dengan betul menggunakan bidang kuasa mahkamah yang sedia ada untuk tidak mengambil kira pengiraan 120 hari di bawah s 257(1)(g) KTN, 28 hari dari 1 Ogos 2021 hingga 28 Jun 2021 apabila sekatan penuh berkuat kuasa (lihat perenggan 13 & 31).

(4) Mahkamah menyedari hakikat bahawa walaupun permohonan lanjutan masa MS Citajaya disampaikan kepada defendan, beliau tidak memfailkan penghujahannya pada tarikh yang diarahkan oleh

mahkamah. Keterangan menunjukkan bahawa MS Citrajaya adalah pembeli yang bona fide dan telah mengambil semua langkah yang perlu untuk mematuhi syarat-syarat di bawah perintah jualan dan lelongan tetapi tidak dapat mematuhi tarikh akhir untuk pembayaran baki harga belian kerana peristiwa di luar kawalannya. Di dalam premis tersebut, timbalan pendaftar telah menggunakan budi bicaranya dengan betul untuk membuat keputusan yang adil dan saksama dalam semua keadaan kes (lihat perenggan 27, 32 & 34).

(5) Memandangkan perayu tidak memohon penggantungan pelaksanaan keputusan timbalan pendaftar, pembeli akhirnya menjadi pemunya berdaftar hartanah tersebut dan memperoleh hak milik yang tidak boleh dinafikan ke atasnya; oleh itu, sebarang cabaran oleh perayu terhadap hak milik pembeli di bawah s 340(2) KTN mestilah melalui tindakan baharu (lihat perenggan 33).]

Cases referred to

CIMB Bank Bhd lwn Khoo Kang Poey dan satu lagi [2022] MLJU 740; [2022] 1 LNS 766, HC (refd)

M & J Frozen Food Sdn Bhd & Anor v Siland Sdn Bhd & Anor [1994] 1 MLJ 294, SC (refd)

Malaysia Building Society Bhd v Merit Aim Sdn Bhd & Anor; Cameron Mall Sdn Bhd & Anor (interveners) [2012] 4 CLJ 269, HC (refd)

Pannir Selvam a/l Sinnaiyah & Anor v Tan Chia Foo & Ors [2021] 7 MLJ 384, HC (folld)

Santhi a/p Krishnan v Malaysia Building Society Berhad [2015] MLJU 2116; [2015] 1 CLJ 1099, CA (refd)

Toh Hi Taa & Anor v Citibank Berhad [2005] 1 LNS 394, HC (refd)

Legislation referred to

Courts of Judicature Act 1964

Distress Act 1951

Hire-Purchase Act 1967

Limitation Act 1953

National Land Code ss 257, 257(1), (1)(g) (1)(h), 267A, 340(2), Forms 16F, 16Q, 19B

Prevention and Control of Infectious Diseases Act 1988 s 11

Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020

Ahmad Zamri bin Asaad Khuzami (with Ahmad Dzulhaziq bin Ahmad Mahmod) (Che Mokhtar & Ling) for the plaintiff.

Fadhil Husseiin Ishak Yassin bin Mansor (self-represented) for the defendant.

Suhaida Mohd Esa (Azri, Lee Swee Seng & Co) for the proposed intervener.

Jamhirah Ali JC:

INTRODUCTION

[1] This is an appeal by the appellant/defendant against the decision of the learned deputy registrar in allowing the intervener/purchaser's application for an extension of time to pay the balance purchase price within 120 days from the date of the sale pursuant to s 257(1)(g) of the National Land Code ('the NLC').

[2] The only issue in this appeal is whether the court has the discretion under the inherent powers to allow suspension of time during the total lockdown period announced by the government and therefore, the 28 days during the total lockdown from 1 June 2021 till 28 June 2021 should be excluded in the computation of the 120 days stated in s 257(1)(g) of the NLC.

BRIEF FACTS

[3] Pursuant to the plaintiff's action for a foreclosure order in Suit BA-24 MFC-473–12 of 2017 in the High Court at Shah Alam, the plaintiff obtained an order for sale on 20 February 2018 against the property charged by the defendant. There was no appeal against the said order by the defendant.

[4] Subsequently, the plaintiff applied to the execution division of High Court Shah Alam to fix an auction date and reserve price to foreclose the charged property. The first auction date was fixed on 9 July 2018 with an initial reserve price of RM3.2m. However, the first auction was unsuccessful and thereafter the plaintiff then filed several applications to fix a new auction date and the reserve price for the subsequent auctions.

[5] Eventually, the property was successfully auctioned on 5 April 2021 and the proposed intervener, MS Citajaya Sdn Bhd (MS Citajaya) was the successful bidder at the said auction at the price of RM1.6m. MS Citajaya paid a deposit sum of RM160,000 and the completion date to settle the balance purchase price was on 3 August 2021 ie 120 days from the auction date pursuant to s 257(1)(g) of the NLC.

[6] MS Citajaya applied for a banking loan facility for the amount of RM965,100 including Business Financing Term Takaful (the facility) from Public Islamic Bank Bhd Kuala Terengganu Branch, to finance the said purchase. On 16 July 2021 MS Citajaya paid the differential sum of RM480,000 to the plaintiff's solicitors.

[7] However, MS Citajaya was unable to settle the balance purchase price by

3 August 2021 for the following reasons:

(a) the implementation of the Movement Control Order (MCO) by the Government of Malaysia under s 11 of the Prevention and Control of Infectious Diseases Act 1988 which commenced on 1 June 2021 and continued with the Restriction Movement Control Order (RMCO) commencing from 3 July 2021 ('the said Control Orders');

(b) due to the said Control Orders, the banking sector had shortened its operating hours to 2pm with only 60% of its employees allowed to be present physically at the bank premises, which had caused the delay in approving the loan facility and the issuance of the Letter of Offer to MS Citajaya;

(c) due to the said Control Orders the law firms were not allowed to operate and subsequently, were only allowed to operate on 27 June 2021 with the condition that the legal firm must first obtain permission from MITI. The closure for 27 days resulted in a delay in the process of completing the loan documentation between MS Citajaya and its financier;

(d) closure of Public Islamic Bank Kuala Terengganu branch premises for ten days due to Covid-19 infection resulted in the delay in execution of loan documentation and Form 19B by MS Citajaya's financier thus causing a delay in presenting the private caveat documentation on behalf of the financier at the PTG Selangor; and

(e) the PTG Selangor was also closed and was only allowed to operate again on 21 July 2021 with only 20% of its employees allowed to be present physically at the PTG office, which caused the delay in the presentation of the private caveat by MS Citajaya's solicitors.

[8] Therefore, MS Citajaya filed a notice of application on 6 August 2021 to seek the court's leave for an extension of time of the completion date, and to intervene in the action, inter alia, for the following orders:

a. Satu Perintah bahawa pihak MS Citajaya Sdn. Bhd. (No. Syarikat: 200701019479 (777491-T)) iaitu Pencelah yang Dicadangkan diberi kebenaran mencelah dalam tindakan di sini. Pencelah dibenarkan untuk lanjutan masa bagi bayaran baki harga jual beli bertarikh 3.8.2021 untuk tempoh empat belas (14) hari dari 3.8.2021; and

b. b. Satu Perintah bahawa tempoh bayaran baki harga jual beli bertarikh 3.8.2021 dilanjutkan untuk tempoh empat belas (14) hari dari 3.8.2021

[9] The plaintiff did not object to the said application for the court to grant an extension of time for payment of the remaining purchase price subject to the condition precedent contained therein. The plaintiff took the position that it is a judicial sale conducted pursuant to the court's order under the National Land

Code, which falls within the court's sole discretion and exclusive jurisdiction, therefore, whether an extension ought to be granted, it is solely within the judicial discretion.

[10] On 24 August 2021, the learned deputy registrar granted an order, inter alia, as follows:

a. Notis Permohonan Pencelah yang Dicadangkan dibatalkan; dan

b. Tempoh akhir pembayaran baki belian adalah pada *1 September, 2021* iaitu setelah dikecualikan tempoh sebanyak 28 hari mulai 1 Jun, 2021 sehingga 28 Jun, 2021 iaitu sepanjang tempoh Total Lockdown 3.0 daripada tempoh masa kiraan 120 hari selaras dengan Seksyen 257(1)(g) Kanun Tanah Negara 1965.

[11] On 26 August 2021, MS Citajaya's financier disbursed the balance purchase price to the plaintiff and subsequently, MS Citajaya having complied with all the terms of the proclamation of sale, the court had issued the certificate of Form 16F and the transfer of the property had completed.

[12] The defendant dissatisfied with the said order by the learned deputy registrar, filed an appeal on 2 September 2021 to this court.

THE DEPUTY REGISTRAR'S DECISION

[13] The learned deputy registrar in his grounds of judgement had considered the law, the facts of the case, issues and the unprecedented circumstances due to the Covid-19 pandemic that had forced the country into a lockdown. In his wisdom to exercise justice, taking into account the unforeseen circumstances related to public health, invoked the court's inherent powers to allow suspension of time during the total lockdown period announced by the Government and therefore, the 28 days during the total lockdown from 1 June 2021 till 28 June 2021 was excluded in the computation of the 120 days stated in s 257(1)(g) of the NLC.

FINDINGS OF THE COURT

[14] Upon perusal of the cause papers filed herein and upon reading the written submissions filed by the parties and having heard the parties' oral submission, I ordered that the appellant's appeal be dismissed. My reasons are as stated below.

[15] At the outset, I find that MS Citajaya being the successful bidder and a bona fide purchaser of the property and having paid the full balance price of the

auction has the locus to participate as a party to defend its rights in this proceeding.

Extension of time under s 257(1)(g) of the NLC

[16] Section 257(1)(g) of the NLC states that:

> 257(1) Every order for sale made by the court under section 256 shall be in form 16H and shall —
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> ...
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> (g) Specify that the balance of the purchase price shall be settled on a date not later than one hundred and twenty days from the date of the sale and that there shall be no extension of the period so specified; ...

[17] If the balance purchase price was not paid within 120 days, the sum paid as a deposit shall be forfeited as provided for in s 257(1)(h) of the NLC:

> (h) Specify that where the balance of the purchase price is not settled on a date specified under paragraph (g), the sum paid as deposit under paragraph (f) to the chargee shall be forfeited and disposed of in the manner specified under section 267A.

[18] Paragraphs (g) and (h) in sub-s 257(1) are new provisions which came into effect on 1 December 2001 with the National Land Code (Amendment) 2001 Amending Act A1104. The requirement to pay the balance purchase price within 120 days from the date of the sale is mandatory as the word 'shall' that appears in s 257(1)(g) of the NLC is 'directory' (see: *Santhi a/p Krishnan v Malaysia Building Society Berhad* [2015] MLJU 2116; [2015] 1 CLJ 1099; *Toh Hi Taa & Anor v Citibank Berhad* [2005] 1 LNS 394; *Malaysia Building Society Bhd v Merit Aim Sdn Bhd & Anor; Cameron Mall Sdn Bhd & Anor (interveners)* [2012] 4 CLJ 269).

[19] Therefore, I agree with the learned deputy registrar's decision that the court does not have the power to grant the extension of time to the purchaser to pay the balance purchase price under s 257(1)(g) of the NLC.

Whether the court has the inherent powers to allow suspension of time during the total lockdown period announced by the Government

[20] It is my considered view that this court can take judicial notice of matters, events and public announcements by the Government in relation to the Covid-19 pandemic and the total lockdown that took place which is an issue raised in this case. Matters, events and public announcements by the Government relating to the pandemic and the implementation of the MCO are facts which are of general and common knowledge, facts which exist and it

is accepted by the public. I drew guidance from the case of *Pannir Selvam a/l Sinnaiyah & Anor v Tan Chia Foo & Ors* [2021] 7 MLJ 384, where Evrol Mariette Peters JC (as Her Ladyship was then) observed the following:

> [82] At this juncture, it is pertinent to note that by virtue of s 57 of the Evidence Act, *the court may take judicial notice of facts which are of general and common knowledge. 'When a Court takes judicial notice of a fact, it simply means that the Court declares that it will find that the fact exists*': per Abdul Malik Ishak J (as he then was) in *Bank Bumiputra (M) Bhd v Mohd Ibrahim bin Salleh* [2000] 5 MLJ 778 at p 797 ...
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> [84] Section 57 of the Evidence Act merely sets out matters which the court must take judicial notice of, but the list therein is not exhaustive. 'The court under s 56 may also take judicial notice of matters which are of common and general knowledge': per Hashim Yeop Sani FCJ in *Pang Ah Chee v Chong Kwee Sang* [1985] 1 MLJ 153 (FC).
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> [85] The manner in which the court takes judicial notice of facts was expounded by Justice Syed Agil Barakbah in *Pembangunan Maha Murni Sdn Bhd v Jururus Ladang Sdn Bhd* [1986] 2 MLJ 30 at pp 31–32:
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> > The important point to note is that s 57 does not prohibit the courts from taking judicial notice of other facts not mentioned therein. *The matter which the court will take judicial notice must be the subject of common and general knowledge and its existence or operation is accepted by the public without qualification* or contention. The test is that the facts involved must be so sufficiently notorious that it becomes proper to assume its existence without proof. (Emphasis added.)
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> [86] A vital criterion of the fact taken judicial notice of is that sufficient notoriety must be attached to it, so as to make it proper for the court to assume its existence without proof. (Emphasis added.)

[21] The Covid-19 pandemic had hit the entire world and never in the history of pandemics had caused such disruption which resulted in the world coming into a gridlock. Many activities were restricted during the lockdown which was imposed by many countries. Inevitably, the pandemic had caused immense disorder in human life and it has taken many lives. The situation was crucial as the safety and life of every individual were at stake. As a consequence, the Government had to impose the MCO with a total lockdown. As one can remember these unprecedented days, during the total lockdown the situation was uncertain and unpredictable. Undeniably this had affected all forms of business and financial transactions. All movements were controlled to a point that most daily important tasks were put on a halt. In the best interest of the country, the Government had to find a balance between its citizen's life and the economy, thus the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 (Act 829) came into force which made provisions for temporary measures to reduce the effects of the Covid-19 disease including modifying related provisions in several Acts, inter alia, the Limitation Act 1953, Distress Act 1951, Courts of Judicature Act 1964, the Hire-Purchase Act 1967 and others. As a result, the courts too issued

'Arahan Ketua Hakim Negara Bilangan 8 Tahun 2021 — Pengecualian Terhadap Pemakaian Peruntukan Undang-Undang Berhubung Dengan Urusan Mahkamah di Seluruh Negara' that allowed to exclude the computation of time for filing of, amongst others, documents, cause papers, notice of appeals and execution of court orders. The banks suspended the repayment of loans, the date of completion of contracts was enlarged, the limitation period was extended, the lockdown period was excluded from the calculation of the time for delivery of vacant possession and the liquidated damages for late delivery of the vacant possession of a housing accommodation, etc. Unfortunately, matters relating to NLC were not included in the said Act, though the Parliament were aware of the situation and the general intention was to help the affected parties (refer to the Parliamentary Hansard when Act 829 was presented at the Dewan Rakyat for debate).

[22] As a result, s 257(1)(g) was not affected by the Covid-19 Act 2020. However, the intention and aspiration during the presentation of Act 829 in Parliament were clearly to help reduce the effects and impact in particular matters involving legal obligations and rights of the people and the affected parties.

[23] The Government announced MCO 3.0, a total lockdown from 1 June 2021 to 14 June 2021 and was further extended from 15 June 2021 to 28 June 2021. During the lockdown, only the essential service sectors were allowed to operate. The courts, land office and legal firms were among the service sectors which were not categorised as essential services. Subsequently, legal firms were only allowed to operate on 27 June 2021 upon obtaining consent from MITI before being operational (see: Bar Council Circular No 202/2021 dated 1 June 2021; Kenyataan Media — SOP Perkhidmatan Guaman Sepanjang Tempoh Perintah Kawalan Pergerakan Fasa Pertama dated 1 June 2021; Bar Council Circular 129/2020).

[24] I agree with the submission by the learned counsel for the plaintiff and the purchaser that due to the total lockdown, the majority of the business operations were severely impacted, including the Land Office's operation, the purchaser's financier and the purchaser's solicitors' firm. Though the banking sector was part of the essential services, this sector was operating under reduced staff with shorter working hours at the office premises and likewise the Land Office. This unprecedented force majeure event had affected billions globally and was beyond anyone's control, not the court, the plaintiff or the bona fide purchaser. No one was to be blamed for the unforeseen delays that had occurred. Therefore, should a bona fide purchaser be punished grossly when it could not meet the dateline due to this unforeseen delay?

[25] Section 257 of the NCL was amended to include paras (g) and (h) in

sub-s (1). From the Hansard, it is clear that the intention of Parliament in amending the NLC to include the mandatory provisions in ss 257(1)(g) and (h) was to protect the interest of the chargor and to ensure the bidders are genuine purchasers who have the financial capability to purchase the property which was auctioned and to prevent any non-serious bidder from participating and manipulating the auction.

[26] Further, if the balance purchase price was not paid within 120 days, under para (h), the sum paid as a deposit to the chargee shall be forfeited and disposed of in the manner specified under s 267A, which the balance after paying for expenses, if any, would be retained in the account of the chargor to reduce the amount due to the chargee. This, obviously would benefit the chargor.

[27] In this case, there is sufficient evidence to prove that the purchaser/intervener had taken the necessary steps to comply with the requirements and conditions under the order for sale and the auction, however, due to the total lockdown announced by the Government, the purchaser could not meet the 120 days dateline. The evidence shows that the conduct of the purchaser was not such that they were trying to gain an advantage. The purchaser was purely precluded under conditions that are unprecedented and which are beyond their control. In short, the purchaser was not a mala fide purchaser.

[28] The learned counsel for the plaintiff also informed that the purchaser had duly complied with all the terms and conditions of the proclamation of sale. The purchaser has caused the balance purchase price of the property to be fully paid to the plaintiff and therefore, completed the sale intended therefrom upon extraction of Form 16Q by the court. Consequently, the purchaser had extracted the sealed copy of the certificate for sale in Form 16F and the property had been duly transferred. Therefore, the purchaser now has an indefeasible title.

[29] Justice is one of the main principles of equity which has been adopted in dealing with matters pertaining to the NLC. As such, in this circumstance, though this court is not conferred with the powers to extend the time stipulated in s 257(1)(g) of the NLC, but, due to the unforeseen and unprecedented events that took place which was caused by the Covid-19 pandemic which resulted in the total lockdown, the justice, in this case, requires the court to invoke its inherent powers to prevent injustice or abuse to the bona fide purchaser.

[30] This court is vested with inherent powers to be exercised towards the ends of justice or to prevent the abuse of the court process. In the case of *CIMB*

Bank Bhd lwn Khoo Kang Poey dan satu lagi [2022] MLJU 740; [2022] 1 LNS 766, the High Court referred to the following:

> [20] Dalam kes undang-undang *Stone World Sdn Bhd v Engareh (M) Sdn Bhd* [2020] 2 MLJ 208; [2020] 4 CLJ 354 panel Mahkamah Rayuan menyimpulkan bahawa:
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> > [63] Inherent powers of the court are separate and distinct source of jurisdiction from statutory powers of the court. They are residuary and reserve source of power. The inherent powers of the court are in addition to the powers specifically conferred by the rules on the court. They are complementary to those powers. The court is free to exercise them towards the ends of justice or to prevent the abuse of the process of the court. Thus, it can be exercised cumulatively and concurrently with other sources of power. It is part of procedural law, not substantive law. It is invoked in relation to the process of litigation (see *Halsbury Laws of England* (95th Ed, Vol 11, 2015), para 23). Their application depends on the circumstances of the case. *The significance of the doctrine of inherent jurisdiction lay in its flexibility, for the court can extend it to any instance which requires its intervention in the absence of precise statutory regulation, or where injustice or abuse might otherwise result. It should be exercised judiciously and should not be circumscribed by rigid criteria or tests* (*Wee Soon Kim Anthony v The Law Society of Singapore* Civil Appeal No 6000 of 2001 (unreported) ('Wee Soon Kim Anthony'). It must not be applied indiscriminately (see Malaysian Civil Procedure [2018] Vol 1 p 1246).
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> [21] Dalam keadaan di mana plaintif tidak lagi mempunyai 'avenue' lain untuk menguatkuasakan hak mereka, mahkamah ini wajar memberikan deklarasi bahawa plaintif adalah pemegang serahhak dan mempunyai hak dan kepentingan undang-undang ke atas hartanah-hartanah tersebut. (Emphasis added.)

[31] Thus, based on the said unprecedented events and circumstances, in this case, to avoid injustice, it required this court to intervene and to exercise its discretion under its inherent powers, to allow suspension of time during the total lockdown period announced by the Government and therefore the 28 days during the total lockdown from 1 June 2021 till 28 June 2021 is excluded in the computation of the 120 days stated in s 257(1)(g) of the NLC.

[32] The court also take cognisance of the fact that the application for the extension of time was served on the defendant. The defendant had filed its affidavit in reply but had failed to file its submission on the date directed by the court. The court had heard all parties. The decision made was not an arbitrary decision. There was no high-handedness, there was no impropriety, and the decision made was transparent. The court has ensured that the interest of the chargor was safeguarded. In *M & J Frozen Food Sdn Bhd & Anor v Siland Sdn Bhd & Anor* [1994] 1 MLJ 294, a case which was decided before the amendment of the NLC, the Supreme Court laid down the principle that:

> We agree that the terms or conditions of sale may be varied, if having regard to the interest of both the chargor and the chargee, it is fair to do so; but the sale being a

judicial one, has to be done by the court after giving the chargor the right to be heard. As the Court's power to order the sale including the authority to fix the price and condition of sale is derived from the statutory provisions of the NLC after giving the chargor the right to be heard, it is manifest that any alteration to the term of condition must likewise be exercised.

[33] Further, in this case since the appellant had not applied to a stay of execution of the learned deputy registrar's decision and the purchaser had paid the full balance purchase price and the property had since been transferred to the bona fide purchaser, the holder of the indefeasible title, hence, I am of the view the appellant now can only challenge the said title under s 340(2) of the NCL under a fresh action.

[34] I find the learned deputy registrar's decision was based on cogent consideration that has taken into account the unprecedented circumstances and the facts of the case that necessitate the court to exercise its discretion under its inherent powers to dispense justice and fairness with 'just and equitable' principle.

[35] For the foregoing reasons, I, therefore, ordered that the appellant's appeal in encl 93 be dismissed with costs of RM5,000.

Appeal dismissed.

Reported by Ashok Kumar